

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
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In Reply Refer To:
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EMS TRANSMISSION: 6/18/04
Instruction Memorandum No. **CA-2004-044**
Expires: 09/30/2005

To: All Field Managers, CDD District Manager

From: State Director

Subject: Implementing the Joint Counterpart Endangered Species Act Section 7
Consultation Regulations in California
DD: 06/30/2004
03/01/2005

Program Areas: Fish, Wildlife, Botany, Threatened and Endangered Species, Forestry, Rangeland, and Fire/Fuels Management.

Purpose: The purpose of this Instruction Memorandum (IM) is to provide information and guidance to field personnel on implementation of the joint counterpart Endangered Species Act (ESA) Section 7 consultation regulations for National Fire Plan (NFP) projects in California.

Policy/Action: As follows:

Responsibility: The Counterpart Regulations allow BLM to make determinations of Not Likely to Adversely Affect (NLAA) listed species or designated critical habitat for proposed actions that support the National Fire Plan. It is expected that projects with NLAA determinations by the BLM would have been considered to be NLAA determinations by the National Marine Fisheries Service (NMFS) or U.S. Fish and Wildlife Service (FWS). This places key responsibility upon line officers, who are ultimately responsible for ensuring actions comply with the requirements of the counterpart regulations, including documenting that the project is within the scope of the National Fire Plan. For this reason, we caution field units to make certain that all projects used in this process conform to the National Fire Plan, and that effects analyses are based

upon the best available scientific and commercial information, and that rationale for the NLAA determinations are well documented.

Procedures for Implementation

Training: All biologists, ecologists, and botanists who conduct Section 7 effects analyses for proposed actions that are Fire Plan Projects and make determinations of effect under the ESA, and line officers who have decision authority for such projects are required to be certified as having successfully completed the mandatory training. Line officers are required to take the web-based training. The training course is available at the following internet address, and can be taken at individual computer work stations:

http://www.ntc.blm.gov/blm_1386/html/gateway/ie/launcher.htm?C_ID=&Mode=.

Certification: After completing the training course, counterpart regulations users must then pass a certification exam. Current field office staff should be trained by June 30, 2004.

Actions Required Before Using the Process: Before using the counterpart regulations process for ESA compliance, Field Managers will notify the appropriate FWS Field Office and NMFS Director of Protected Resources in Silver Spring, Maryland, in writing, using the following example.

Example: The (Field Office Name) has completed the Section 7 Joint Counterpart Regulation on-line training as of (insert date). We are informing you that this office will begin using this authority to make “Not Likely To Be Adversely Affected” determinations for National Fire Plan (NFP) projects, when applicable. Projects include all NFP – Community Assistance Grant projects and BLM-NFP projects that are elevated to the State Office level. Currently, (insert names of Staff and job title) have passed the on-line training.

Send the formal letter(s) that a subunit has completed training and plans to implement the counterpart regulation, the NMFS email and address are (email is preferred):

NMFS.Nationalfireplan@noaa.gov

Laurie K. Allen, Director
Office of Protected Resources
NOAA Fisheries, SSMC3 - F/PR3
1315 East West Highway
Silver Spring, MD 20910

For the FWS, send the letter to the subunit’s normal FWS Field Office Supervisor(s).

Required Documentation: BLM field units will maintain a list of NFP projects for which the counterpart consultation regulations were used. This will include the project name, type of Fire Plan Project (e.g., thinning, prescribed fire, etc.), and a list of threatened or endangered species for which a NLAA determination was made. Please coordinate project selection on the first one or two projects with your State Contact, James Newman.

Reporting Requirements: Annually, by March 1st, each Field Office will provide the State Office with a list of NFP projects for which the counterpart regulations were used. Additionally, each subunit (Field Office) that uses the counterpart regulations must complete the procedural checklist (see Appendix 2 of the Alternative Consultation Agreement (ACA)), certifying that the procedural requirements have been met and submit it annually by March 1st to the BLM State Office.

These documents may be sent to the State Contact, James Newman ((916) 978-4635, or email: James_Newman@ca.blm.gov). State Contacts serve as information resources to answer questions arising from field units, and to ensure consistency in analysis and reporting.

Relationship to Streamlining: The use of level 1 teams for NLAA determinations on National Fire Plan projects is at the discretion of local BLM Field Offices. The final determination lies with the action agency (BLM). The ACA allows the BLM to request assistance from the Fish and Wildlife Service and the National Marine Fisheries Service (Services) relevant to the effects analysis but this is not required.

Relationship to the Northwest National Fire Plan Project Design and Consultation Process (PDC): The PDC process was designed to define actions under the National Fire Plan that are NLAA. Criteria are provided to reduce the potential effects of these actions to NLAA, and over 500 work elements are addressed, covering 50 species. The Services have already concurred with these criteria and final effects determinations. For this reason, use of these project design criteria, along with the documentation and rationale provided by the PDC's is strongly encouraged.

Defining National Fire Plan Projects: The ACA requires that all projects under the Counterpart Regulations are "within the scope of the NFP, such as prescribed fire, mechanical fuels treatments (thinning and removal of fuels to prescribed objectives), emergency stabilization, burned area rehabilitation, road maintenance and operation activities, ecosystem restoration, and culvert replacement actions." In the "Project ESA Compliance Statement" (see ACA Appendix 1), the line officer signs and certifies that the project, as proposed "is within the scope of, and will support, the National Fire Plan." To ensure that projects are within the scope of the National Fire Plan, line officers should reference the following National Fire Plan document which contains a list of relevant actions: *A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment - 10-Year Comprehensive Strategy, August 2001*. The list of actions contained within this document is summarized in Appendix 1 (attached).

Timeframe: The policy and guidance issued in this IM are effective immediately upon receipt.

Background: These Counterpart Regulations complement the consultation process by providing a more efficient approach to completing Section 7 consultation for projects that support the National Fire Plan. The Counterpart Regulations allow BLM to proceed with actions that are "not likely to adversely affect" (NLAA) listed species or designated

critical habitat, without consulting with or obtaining written concurrence from the Services, U.S. Fish and Wildlife Service and/or NOAA Fisheries, specifically for proposed actions that support the National Fire Plan. For details, please refer to: *Alternative Consultation Agreement to Implement Section 7 Counterpart Regulations, Bureau Of Land Management, National Marine Fisheries Service, and U.S. Fish and Wildlife Service.*

Manual/Handbook Sections Affected: No manual or handbook sections are affected.

Coordination: This IM was developed in coordination with the Washington Office Representative, Karl Stein (530) 224-2156.

Contact: As per reporting requirements summarized above, your State Contact is James Newman ((916) 978-4635, or email: James_Newman@ca.blm.gov).

Signed by:
James Wesley Abbott
Associate State Director

Authenticated by:
Richard A. Erickson
Records Management

Attachment
Appendix 1 (3 pp.)

Appendix I. Projects within the scope of the National Fire Plan

Goal 1. Improve Prevention and Suppression

Firefighting Readiness – Public and firefighter safety is the first priority in all fire management.

Prevention Through Education – Reduce the risks to homes and private property through prevention education.

Actions

1. Improve Federal, State, and local firefighting resource capability and readiness to protect communities and the environment from wildland fires.
2. Reduce the incidence of injury to life and property resulting from catastrophic wildland fires.
3. Expand outreach and education to homeowners and communities about fire prevention through use of programs such as “Firewise.”
4. Develop a consistent preparedness planning model, among the Federal agencies and others, that analyzes cost-effective fire protection among all administrative boundaries. In developing the model, consider State and local protection needs and resources in the wildland-urban interface.

Goal 2. Reduce Hazardous Fuels

Hazardous Fuel Reduction – Prioritize hazardous fuels reduction where the negative impacts of wildland fire are greatest.

Actions

1. Reduce the total number of acres at risk to severe wildland fire.
2. Ensure communities most at risk in the wildland-urban interface receive priority for hazardous fuels treatment.
3. Expand and improve integration of the hazardous fuels management program to reduce severe wildland fires to protect communities and the environment.
4. Incorporate public health and environmental quality considerations in fire management activities undertaken for the hazardous fuels management program.
5. Develop smoke management plans in conjunction with prescribed fire planning and implementation.
6. Develop strategies to address fire-prone ecosystem problems that augment fire risk or threaten sustainability of these areas.
7. Assure maintenance of areas improved by fuels treatment by managing activities permitted on the restored land to maintain resiliency.
8. Conduct and utilize research to support the reduction of hazardous fuels in wildland urban interface communities and environments.

9. Ensure local environmental conditions are factored into hazardous fuels treatment planning.

Goal 3. Restore Fire Adapted Ecosystems

Rehabilitation – Prevent invasive species and restore watershed function and biological communities through short-term rehabilitation.

Restoration – Restore healthy, diverse, and resilient ecological systems to minimize uncharacteristically severe fires on a priority watershed basis through long-term restoration.

Using Science and Information – Promote the development and use of the best available science along with local and indigenous knowledge.

Monitoring – Monitor restoration and rehabilitation projects for effectiveness and share the results in order to facilitate adaptive implementation.

Actions

1. In the short-term, perform burned area emergency stabilization and rehabilitation work to protect life and property, protect municipal watersheds, and prevent further degradation of critical cultural and natural resources.
2. In the long-term, restore burned areas and repair and improve land unlikely to recover naturally from severe fire damage.
3. Place priority on at-risk watersheds that have been damaged by wildland fire.
4. Promote the establishment of sources of native seed and other plant material.
5. Promote awareness of and training in the use of minimum impact suppression activities.
6. Promote research and effective use of restoration and rehabilitation treatments.
7. Eradicate or minimize the rate of spread of invasive species that negatively impact natural fire cycles and fire-adapted ecosystems.
8. Improve the capability to decrease invasive species in burned areas through research and development.
9. Research interactions between fire, land management actions, and other disturbances, and apply lessons learned to future management decisions.

Goal 4. Promote Community Assistance

Increase Local Capacity – Where appropriate, stimulate local capacity to accomplish hazardous fuels reduction and rehabilitation work.

Incentives – Promote better fire prevention planning and actions in local communities through technical assistance and cost-sharing incentives.

Biomass Utilization – Employ all appropriate means to stimulate industries that will utilize small-diameter, woody material resulting from hazardous fuel reduction activities, such as for biomass electric power, pulp and paper-making, and composite structural building materials.

Actions

1. Reduce the losses to communities and individuals from wildland fire.
2. Promote markets for traditionally underutilized wood as a value-added outlet for byproducts of hazardous fuel reduction and ecosystem restoration efforts.
3. Promote opportunities to continue and enhance sustainable livestock grazing as part of protection and restoration strategies.
4. Increase incentives for private landowners to address defensible space and fuels management needs on private property through local land use policies.
5. Promote local government initiatives to implement fire-sensitive land use planning.
6. Promote public knowledge and understanding of wildland fire, including risks and the role of fire in natural ecosystem processes.